



2003 ASSEMBLY BILL 850

February 19, 2004 - Introduced by Representatives GUNDRUM, MOLEPSKE, HINES, TOWNSEND, GRONEMUS, KRAWCZYK, TAYLOR, BIES, ALBERS, GUNDERSON and SERATTI, cosponsored by Senators LAZICH, A. LASEE, LASSA and KANAVAS. Referred to Committee on Judiciary.

1 **AN ACT** *to repeal* 60.23 (21) (title); *to renumber and amend* 60.23 (21); *to*
2 *amend* 66.0107 (1) (a), 66.0107 (1) (b), 349.02 (2) (b) 2., 349.02 (2) (b) 4., 778.25
3 (1) (a) 1., 818.02 (7) and 961.577; and *to create* 59.54 (25m) and 778.25 (1) (a)
4 1m. of the statutes; **relating to:** county and municipal ordinances regarding
5 drug paraphernalia.

Analysis by the Legislative Reference Bureau

Current law prohibits the possession, manufacture, and delivery of drug paraphernalia. If a person 17 years of age or older violates the prohibitions relating to drug paraphernalia, he or she is subject to criminal penalties (a fine or imprisonment or both). If a person under the age of 17 violates the prohibitions relating to drug paraphernalia, he or she is generally subject to suspension or revocation of his or her privilege to operate a motor vehicle for not less than six months nor more than five years and either or both of the following: a forfeiture (civil monetary penalty) of up to \$500 (with the amount depending on drug paraphernalia offenses the person committed in the preceding 12 months) and a requirement that he or she participate in community service work. Current law prohibits and provides more severe criminal penalties for the possession or use of drug paraphernalia used to produce or store methamphetamine.

Current law also allows a city, village, or town to enact and enforce ordinances prohibiting the possession, manufacture, or delivery of drug paraphernalia. The ordinances must prohibit the same conduct that is prohibited under the state

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statutes relating to the possession, manufacture, and delivery of drug paraphernalia generally (as opposed to the state statutes governing the possession or use of methamphetamine-related drug paraphernalia). In addition, the ordinances can apply only to the possession, manufacture, and delivery of drug paraphernalia by a person under the age of 17.

This bill allows a city, village, or town to enact and enforce an ordinance prohibiting the possession, manufacture, or delivery of drug paraphernalia (other than methamphetamine-related drug paraphernalia) by persons 17 years of age and older. The bill also allows a county to enact and enforce a similar ordinance, as well as one that applies to persons under 17 years of age. A county ordinance, however, would not apply to conduct prohibited by a comparable municipal ordinance. (The same restriction applies under current law to county ordinances prohibiting the possession of marijuana.)

Any ordinance enacted under the bill must prohibit the same conduct that is prohibited under the state statutes relating to the possession, manufacture, and delivery of drug paraphernalia generally. A person prosecuted for violating an ordinance enacted under this bill would be subject to a forfeiture in an amount established by the ordinance.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 59.54 (25m) of the statutes is created to read:

2 **59.54 (25m) DRUG PARAPHERNALIA.** The board may enact an ordinance to
3 prohibit conduct that is the same as that prohibited by s. 961.573 (1) or (2), 961.574
4 (1) or (2), or 961.575 (1) or (2) and provide a forfeiture for violation of the ordinance.

5 An ordinance enacted under this subsection does not apply to conduct in a
6 municipality that has enacted an ordinance prohibiting that conduct under s.
7 66.0107 (1) (bp).

8 **SECTION 2.** 60.23 (21) (title) of the statutes is repealed.

9 **SECTION 3.** 60.23 (21) of the statutes is renumbered 66.0107 (1) (bp) and
10 amended to read:

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1 66.0107 (1) (bp) ~~Adopt~~ Enact and enforce an ordinance to prohibit conduct that
2 is the same as that prohibited by s. 961.573 (1) or (2), 961.574 (1) or (2), or 961.575
3 (1) or (2) and provide a forfeiture for violation of the ordinance.

4 **SECTION 4.** 66.0107 (1) (a) of the statutes is amended to read:

5 66.0107 (1) (a) Prohibit all forms of gambling and fraudulent devices and
6 practices;

7 **SECTION 5.** 66.0107 (1) (b) of the statutes is amended to read:

8 66.0107 (1) (b) Seize anything devised solely for gambling or found in actual
9 use for gambling and destroy the device after a judicial determination that it was
10 used solely for gambling or found in actual use for gambling; ~~and.~~

11 **SECTION 6.** 349.02 (2) (b) 2. of the statutes is amended to read:

12 349.02 (2) (b) 2. Chapter 961 and local ordinances that strictly conform to s.
13 961.573 (1) or (2), 961.574 (1) or (2), or 961.575 (1) or (2).

14 **SECTION 7.** 349.02 (2) (b) 4. of the statutes is amended to read:

15 349.02 (2) (b) 4. Local ordinances enacted under s. 59.54 (25), ~~60.23 (21)~~ or
16 66.0107 (1) (bm).

17 **SECTION 8.** 778.25 (1) (a) 1. of the statutes is amended to read:

18 778.25 (1) (a) 1. Under s. 125.07 (4) (a) or (b), 125.085 (3) (b), or 125.09 (2),
19 ~~961.573 (2), 961.574 (2) or 961.575 (2)~~ or under a local ordinance strictly conforming
20 to one of those statutes brought against an adult in circuit court or against a minor
21 in the court assigned to exercise jurisdiction under chs. 48 and 938.

22 **SECTION 9.** 778.25 (1) (a) 1m. of the statutes is created to read:

23 778.25 (1) (a) 1m. Under s. 961.573 (2), 961.574 (2), or 961.575 (2) brought
24 against a minor in the court assigned to exercise jurisdiction under chs. 48 and 938
25 or under a local ordinance strictly conforming to s. 961.573 (1) or (2), 961.574 (1) or

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1 (2), or 961.575 (1) or (2) brought against an adult in circuit court or against a minor
2 in the court assigned to exercise jurisdiction under ch. 48 and 938.

3 **SECTION 10.** 818.02 (7) of the statutes is amended to read:

4 818.02 (7) In an action for a forfeiture under s. 961.573 (2), 961.574 (2) or
5 961.575 (2), or under a local ordinance strictly conforming to ~~one of those statutes s.~~
6 961.573 (1) or (2), 961.574 (1) or (2), or 961.575 (1) or (2).

7 **SECTION 11.** 961.577 of the statutes is amended to read:

8 **961.577 Municipal ordinances.** Nothing in this subchapter precludes a
9 county, city, village, or town from prohibiting conduct that is the same as that
10 prohibited by s. 961.573 (1) or (2), 961.574 (1) or (2) or 961.575 (1) or (2).

11 (END)